

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #9	CCRB Case #: 201808980	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 10/27/2018 3:00 AM	Location of Incident: [REDACTED]	Precinct: 01	18 Mo. SOL 4/27/2020	EO SOL 12/12/2020	
Date/Time CV Reported Sun, 10/28/2018 2:09 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 10/28/2018 2:09 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Wenming Wu	31370	[REDACTED]	001 PCT
2. POM Gregory Viggiani	17853	[REDACTED]	001 PCT
3. POM Yichan Yang	06491	[REDACTED]	001 PCT
4. POM Chaz Turner	04587	[REDACTED]	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Wenming Wu	Force: On Governors Island in Manhattan, Police Officer Wenming Wu used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Gregory Viggiani	Force: On Governors Island in Manhattan, Police Officer Gregory Viggiani used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Yichan Yang	Force: On Governors Island in Manhattan, Police Officer Yichan Yang used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Chaz Turner	Force: On Governors Island in Manhattan, Police Officer Chaz Turner used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Gregory Viggiani	Abuse: On Governors Island in Manhattan, Police Officer Gregory Viggiani threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
F.POM Wenming Wu	Abuse: Inside 10 South Street in Manhattan, Police Officer Wenming Wu sexually humiliated § 87(2)(b) [REDACTED]	[REDACTED]
G.POM Wenming Wu	Abuse: Inside 10 South Street in Manhattan, Police Officer Wenming Wu forcibly removed § 87(2)(b) [REDACTED] to the hospital.	[REDACTED]

### Case Summary

On October 28, 2018, § 87(2)(b) filed this complaint via the CCRB's online website.

On October 27, 2018, at approximately 3 a.m., § 87(2)(b) was on Governor's Island in line with friends for the Governor's Island Ferry to transport her to the Manhattan side. An unidentified man cut the line to the ferry with event staff chasing after him, threatening to have officers arrest him. § 87(2)(b) told event staff that they could not arrest the unidentified man. Police Officer Wenming Wu, Police Officer Gregory Viggiani, Police Officer Yichan Yang and Police Officer Chaz Turner, all of the 1<sup>st</sup> Precinct, arrived. PO Wu and PO Viggiani handcuffed § 87(2)(b) and all four officers allegedly used force against her (**Allegation A – Force: § 87(2)(g)**; **Allegation B – Force: § 87(2)(g)**; **Allegation C – Force: § 87(2)(g)**; **Allegation D – Force: § 87(2)(g)**). PO Viggiani threatened to arrest § 87(2)(b) (**Allegation E – Abuse of Authority: § 87(2)(g)**). Officers transported § 87(2)(b) on the ferry and held her in a waiting room in 10 South Street in Manhattan until EMS arrived. In the waiting room, § 87(2)(b)'s bra was exposed as her shirt was pulled down. § 87(2)(b) asked PO Wu to pull up her shirt to cover her bra, but he refused to do so (**Allegation F – Abuse of Authority: § 87(2)(g)**). EMTs arrived. PO Wu forcibly removed § 87(2)(b) to § 87(2)(b) (**Allegation G – Abuse of Authority: § 87(2)(g)**). No summons or arrests were affected.

Body Worn Camera footage partially captured this incident (Board Review 01).

This case was sent to ADR on December 17, 2018, and was returned to investigations on February 12, 2019.

### Findings and Recommendations

**Allegation (A) Force: On Governors Island in Manhattan, Police Officer Wenming Wu used physical force against § 87(2)(b)**

**Allegation (B) Force: On Governors Island in Manhattan, Police Officer Gregory Viggiani used physical force against § 87(2)(b)**

**Allegation (C) Force: On Governors Island in Manhattan, Police Officer Yichan Yang used physical force against § 87(2)(b)**

**Allegation (D) Force: On Governors Island in Manhattan, Police Officer Chaz Turner used physical force against § 87(2)(b)**

**Allegation (E) Abuse of Authority: On Governors Island in Manhattan, Police Officer Gregory Viggiani threatened to arrest § 87(2)(b)**

It is undisputed that officers arrived at the Governor's Island ferry after an incident between an unknown man and ferry staff. It is also undisputed that § 87(2)(b) got into a dispute with the officers when they arrived and that the officers instructed her to get off of the ferry but § 87(2)(b) refused and physically resisted their attempts to remove her. It is also undisputed that § 87(2)(b) was under the influence of alcohol at the time of the incident and that the disturbance on the ferry was preventing it from leaving with other customers.

§ 87(2)(b) alleged that all four officers pushed, pulled, and dragged her to remove her from the ferry (Board Review 02). She also alleged that the officers grabbed and twisted her § 87(2)(b). She told the officers that she was not going to get off the ferry and that they would have to put her in handcuffs in order to do so. The officers then held her by the arms and pulled her into a nearby building. Before entering the building, PO Viggiani told § 87(2)(b) she could be arrested for assaulting a police officer or resisting arrest.

According to PO Viggiani, when he and PO Wu attempted to guide § 87(2)(b) off the ferry boat, she started "throwing elbows" and struck him in the chest. (Board Review 04). PO

Viggiani threatened to arrest § 87(2)(b) saying “Don’t hit me again, or else you’re going to be arrested for assaulting a police officer.” The officers continued to guide § 87(2)(b) off the ferry and placed her in handcuffs. PO Viggiani did not drag § 87(2)(b) and did not recall if any other officer did so.

According to PO Wu, he and PO Viggiani guided § 87(2)(b) off the ferry and placed her in handcuffs. § 87(2)(b) did not strike PO Viggiani, but when she started “throwing her hands” she nearly struck PO Viggiani in the face, which PO Wu characterized as “resisting arrest.” PO Wu did not recall if PO Viggiani threatened to arrest § 87(2)(b) (Board Review 03).

Body Worn Camera footage begins after § 87(2)(b) has been removed from the ferry and placed in handcuffs. At VLC timestamp 00:00, PO Wu’s BWC footage shows the officers escorting § 87(2)(b) by her arms towards the building (Board Review 01). Neither PO Wu’s nor PO Yang’s BWC footage captures any use of force by the officers, nor PO Viggiani threatening to arrest § 87(2)(b) (Board Review 09).

Force may be used when it is reasonable to place a person into custody, and any application of force must be reasonable under the circumstances. Patrol Guide 221-01 (Board Review 12). A person is guilty of obstructing government administration (OGA) when he intentionally prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference. Penal Law 195.05 (Board Review 13).

§ 87(2)(b) acknowledged refusing the officers’ commands to get off the ferry and resisting their attempts to remove her from the ferry. § 87(2)(g)

§ 87(2)(b)

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**Allegation (F) Abuse of Authority: Inside 10 South Street in Manhattan, Police Officer Wenming Wu sexually humiliated § 87(2)(b)**

It is undisputed that § 87(2)(b)’s bra was exposed while she sat inside 10 South Street in Manhattan, and that she requested to have her shirt pulled above her exposed bra. PO Wu’s Body Worn Camera footage shows that § 87(2)(b) asked three times to either have her exposed bra covered or to be allowed to cover herself. One of these requests is captured on Body Worn Camera footage at 37:45 (Board Review 01), during which § 87(2)(b) tells PO Wu, “Look, this is not okay, they’re taking photos, my shirt is up, let me fix my shirt. You should not be letting them take photos and videotaping that by the way, that’s kind of on you.” Ferry personnel is visible standing about twenty feet from the bench where § 87(2)(b) is seated. § 87(2)(b) is wearing a jacket over her shirt. Later, an EMT fixed § 87(2)(b)’s shirt after she had been lodged into an ambulance.

According to § 87(2)(b) while she was seated on the bench inside 10 South Street in Manhattan, an unknown man took a selfie on his cell phone, including § 87(2)(b) in the frame.

After being presented with his Body Worn Camera footage of § 87(2)(b) telling PO Wu that civilians nearby were taking photos of § 87(2)(b) while she was handcuffed with her bra exposed above her shirt, PO Wu said that he was facing away from these nearby civilians and did not recall if these civilians took photos of § 87(2)(b). PO Wu described this group as “event security guards” on the Manhattan side of the ferry. When asked why PO Wu did not allow § 87(2)(b) to “fix her shirt”, PO Wu responded, “She’s handcuffed.” When asked why PO Wu did not fix § 87(2)(b)’s shirt, PO Wu said, “I’m not touching a female.” When asked if there is any procedure to make sure the undergarments of a prisoner are not exposed during transport, PO Wu said, “We’d try to get a female to fix it.”

A bra is an undergarment that is private and covers a private body part. § 87(2)(b) expressed that she was humiliated because of her exposure in a public space. Therefore, this allegation is pleaded as sexual humiliation.

Patrol Guide Procedure 203-09 (Board Review 08) states that members should be courteous and respectful when in contact with the public. Patrol Guide Procedure 203-10 states that a police officer is prohibited from engaging in conduct prejudicial to good order, efficiency, or discipline of the Department (Board Review 14).

By PO Wu’s own admission, he took no affirmative steps to address § 87(2)(b)’s multiple requests to have her exposed undergarment covered. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Inside 10 South Street in Manhattan, Police Officer Wenming Wu forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that PO Wu forcibly removed § 87(2)(b) to the hospital. § 87(2)(b) acknowledged she had been drinking and said she had only had three drinks over the course of five hours prior to her encounter with PO Wu.

PO Wu stated that he made the determination to forcibly remove § 87(2)(b) to the hospital because § 87(2)(b) was intoxicated to a point where she was a danger to herself. PO Wu did not believe that § 87(2)(b) was an emotionally disturbed person. In PO Wu’s experience, the level of intoxication required for a civilian to be forcibly removed to the hospital is when “they can’t care for themselves.” PO Wu explained that § 87(2)(b) could not take care of herself because of “her demeanor.” He also stated that he could smell alcohol on her, and that it was wet outside and she could hurt herself. When asked if he believed that § 87(2)(b) was a threat to herself or others, PO Wu said “Yes” and stated that she could not control herself due to her intoxication.

PO Viggiani provided a statement that was generally consistent with PO Wu’s.

The AIDED prepared by PO Wu for § 87(2)(b) notes that § 87(2)(b) was intoxicated and refused to get off the boat on Governors Island after the security crew told her that the boat had reached capacity. (Board Review 10).

PO Wu’s Body Worn Camera footage shows PO Wu placing § 87(2)(b) into custody on Governors Island at 03:13 a.m., and § 87(2)(b) first interacting with EMS medical personnel at 04:09 a.m. in Manhattan (VLC timestamp 00:00; 56:09). Throughout this hour, § 87(2)(b) is

argumentative with officers, but is coherent and ambulatory throughout. PO Wu does not call for a supervisor to evaluate § 87(2)(b) during this incident (Board Review 01).

A person is considered emotionally disturbed, and therefore must be taken into protective custody, when she appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others. Patrol Guide Procedure 221-13 (Board Review 11). According to this Patrol Guide Procedure, an officer must assess the situation for a threat of immediate serious physical injury to the emotionally disturbed individual and if the emotionally disturbed individuals' actions do not constitute an immediate threat of serious physical injury or death to himself or others, the officer should attempt to isolate and contain the emotionally disturbed person while maintaining a zone of safety until the arrival of a patrol supervisor and EMS personnel. It is highlighted that the officer should not attempt to take the emotionally disturbed person into custody without the specific direction of a supervisor. Only if the EDP is not violent and willing to leave voluntarily should the officers take the EDP into custody without the specific direction of a supervisor.

The officers described no actions that indicated § 87(2)(b) posed an immediate threat of serious physical injury to herself or others. He also acknowledged that he did not consider § 87(2)(b) to be an emotionally disturbed person. PO Wu notes her intoxication as the only reason she was forcibly removed to the hospital. In addition, BWC footage captures § 87(2)(b)'s actions after she was placed in handcuffs and she does not appear to be mentally ill or temporarily deranged, and is not conducting herself in a manner that is likely to result in serious injury to herself or others. Additionally, Patrol Guide procedure prohibits officers from taking a person that is not an immediate threat of serious harm to themselves or others into custody without the direction of a supervisor. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- PO Wu has been a member-of-service for 7 years and this is the first CCRB complaint to which he has been a subject.
- PO Viggiani has been a member-of-service for 8 years and this is the second CCRB complaint to which he has been a subject with 1 allegation.
  - #201210335 involved a force allegation. The case was closed as alleged victim uncooperative.

#### **Mediation, Civil and Criminal Histories**

- This case was sent to ADR on December 17, 2018, and was returned to investigations on February 12, 2019.
- As of June 17, 2019, § 87(2)(b) has not submitted a Notice of Claim to the NYC Comptroller's office (Board Review 06).
- According to the Office of Court Administration (OCA), § 87(2)(b) has not been convicted of any crime in New York City (Board Review 07).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date